



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3386

Introduced 2/10/2010, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11-5	from Ch. 110 1/2, par. 11-5
755 ILCS 5/11-14.1	from Ch. 110 1/2, par. 11-14.1
755 ILCS 5/11-7 rep.	

Amends the Probate Act of 1975. Provides that upon the filing of a petition by a minor's living, adoptive, or adjudicated parent whose parental rights have not been terminated, the court shall discharge the guardian and terminate the guardianship if the parent establishes, by a preponderance of the evidence, that a material change in the circumstances of the minor or the parent has occurred since the guardian's appointment; unless the guardian establishes, by clear and convincing evidence, that termination of the guardianship would not be in the best interests of the minor. In determining the minor's best interests, the court shall consider relevant factors including: the interaction and interrelationship of the minor with the parent and those in the parent's household; the ability of the parent to provide a safe, nurturing environment for the minor; the relative stability of the parties and the minor; the minor's adjustment to his or her home, school, and community; and the nature and extent of visitation between the parent and the minor and the guardian's ability and willingness to facilitate visitation. Repeals provisions concerning the parental right to custody.

LRB096 14818 AJ0 35372 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing
5 Sections 11-5 and 11-14.1 as follows:

6 (755 ILCS 5/11-5) (from Ch. 110 1/2, par. 11-5)

7 Sec. 11-5. Appointment of guardian.

8 (a) Upon the filing of a petition for the appointment of a
9 guardian or on its own motion, the court may appoint a guardian
10 of the estate or of both the person and estate, of a minor, or
11 may appoint a guardian of the person only of a minor or minors,
12 as the court finds to be in the best interest of the minor or
13 minors.

14 (a-1) A parent, adoptive parent or adjudicated parent,
15 whose parental rights have not been terminated, may designate
16 in any writing, including a will, a person qualified to act
17 under Section 11-3 to be appointed as guardian of the person or
18 estate, or both, of an unmarried minor or of a child likely to
19 be born. A parent, adoptive parent or adjudicated parent, whose
20 parental rights have not been terminated, or a guardian or a
21 standby guardian of an unmarried minor or of a child likely to
22 be born may designate in any writing, including a will, a
23 person qualified to act under Section 11-3 to be appointed as

1 successor guardian of the minor's person or estate, or both.
2 The designation must be witnessed by 2 or more credible
3 witnesses at least 18 years of age, neither of whom is the
4 person designated as the guardian. The designation may be
5 proved by any competent evidence. If the designation is
6 executed and attested in the same manner as a will, it shall
7 have prima facie validity. The designation of a guardian or
8 successor guardian does not affect the rights of the other
9 parent in the minor.

10 (b) The court lacks jurisdiction to proceed on a petition
11 for the appointment of a guardian of a minor if it finds that
12 ~~(i)~~ the minor has a living parent, adoptive parent or
13 adjudicated parent, whose parental rights have not been
14 terminated, whose whereabouts are known, and who is willing and
15 able to make and carry out day-to-day child care decisions
16 concerning the minor, unless: (1) the parent or parents
17 voluntarily relinquished physical custody of the minor; (2)
18 ~~consent to the appointment or,~~ after receiving notice of the
19 hearing under Section 11-10.1, the parent or parents fail to
20 object to the appointment at the hearing on the petition; (3)
21 the parent or parents consent to the appointment as evidenced
22 by a written document that has been notarized and dated, or by
23 a personal appearance and consent in open court; or (4) ~~or (ii)~~
24 there is a guardian for the minor appointed by a court of
25 competent jurisdiction. There shall be a rebuttable
26 presumption that a parent of a minor is willing and able to

1 make and carry out day-to-day child care decisions concerning
2 the minor, but the presumption may be rebutted by a
3 preponderance of the evidence.

4 (b-1) If the court finds the appointment of a guardian of
5 the minor to be in the best interest of the minor, and if a
6 standby guardian has previously been appointed for the minor
7 under Section 11-5.3, the court shall appoint the standby
8 guardian as the guardian of the person or estate, or both, of
9 the minor unless the court finds, upon good cause shown, that
10 the appointment would no longer be in the best interest of the
11 minor.

12 (c) If the minor is 14 years of age or more, the minor may
13 nominate the guardian of the minor's person and estate, subject
14 to approval of the court. If the minor's nominee is not
15 approved by the court or if, after notice to the minor, the
16 minor fails to nominate a guardian of the minor's person or
17 estate, the court may appoint the guardian without nomination.

18 (d) The court shall not appoint as guardian of the person
19 of the minor any person whom the court has determined had
20 caused or substantially contributed to the minor becoming a
21 neglected or abused minor as defined in the Juvenile Court Act
22 of 1987 unless 2 years have elapsed since the last proven
23 incident of abuse or neglect and the court determines that
24 appointment of such person as guardian is in the best interests
25 of the minor.

26 (e) Previous statements made by the minor relating to any

1 allegations that the minor is an abused or neglected child
2 within the meaning of the Abused and Neglected Child Reporting
3 Act, or an abused or neglected minor within the meaning of the
4 Juvenile Court Act of 1987, shall be admissible in evidence in
5 a hearing concerning appointment of a guardian of the person or
6 estate of the minor. No such statement, however, if
7 uncorroborated and not subject to cross-examination, shall be
8 sufficient in itself to support a finding of abuse or neglect.

9 (Source: P.A. 90-430, eff. 8-16-97; 90-472, eff. 8-17-97;
10 90-796, eff. 12-15-98.)

11 (755 ILCS 5/11-14.1) (from Ch. 110 1/2, par. 11-14.1)

12 Sec. 11-14.1. Revocation of letters.

13 (a) Upon the minor reaching the age of majority, the
14 letters of office shall be revoked only as to that minor and
15 the guardianship over that minor shall be terminated. The
16 letters of office and the guardianship shall remain as to any
17 other minors included in the same letters of office or
18 guardianship order.

19 (b) Upon the filing of a petition by a minor's living,
20 adoptive, or adjudicated parent whose parental rights have not
21 been terminated, the court shall discharge the guardian and
22 terminate the guardianship if the parent establishes, by a
23 preponderance of the evidence, that a material change in the
24 circumstances of the minor or the parent has occurred since the
25 entry of the order appointing the guardian; unless the guardian

1 establishes, by clear and convincing evidence, that
2 termination of the guardianship would not be in the best
3 interests of the minor. In determining the minor's best
4 interests, the court shall consider all relevant factors
5 including:

6 (1) The interaction and interrelationship of the minor
7 with the parent and members of the parent's household.

8 (2) The ability of the parent to provide a safe,
9 nurturing environment for the minor.

10 (3) The relative stability of the parties and the
11 minor.

12 (4) The minor's adjustment to his or her home, school,
13 and community, including the length of time that the minor
14 has lived with the parent and the guardian.

15 (5) The nature and extent of visitation between the
16 parent and the minor and the guardian's ability and
17 willingness to facilitate visitation.

18 (Source: P.A. 90-796, eff. 12-15-98.)

19 (755 ILCS 5/11-7 rep.)

20 Section 10. The Probate Act of 1975 is amended by repealing
21 Section 11-7.